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COOPERATION, CONFLICT SOLUTION AND SOCIAL CONTROL
CIVIL AND ECCLESIASTICAL JUSTICE IN PREINDUSTRIAL SWEDEN

Jan Sundin (+)

Abstract: This article discusses the change from a local system of social control in pre-industrial Sweden to a more centralized, professional system which emerged slowly during the centuries preceding the present one. Some attempts are also made to analyze the consequences this change might have had on crime, either the "real level" of criminal behaviour or the level of prosecuted crime, although it is difficult to isolate the impact of "control" from other factors undergoing change during the same period.(1)

1. CRIME AND SOCIAL CONTROL IN EARLY SEVENTEENTH CENTURY SWEDEN

In order to understand the control system of early seventeenth century Sweden we must first know a little about the political, religious and social context. Sweden was by then involved in a period of intensive state expansion domestically as well as in its foreign relations. The Vasa kings of the sixteenth century had initiated this expansionistic policy by the establishment of a stronger bureaucracy, a defence against Danish ambitions in the south and an expansion in the east. Their successors continued this policy, which was accompanied by increasing demands on the population. The State needed money for the administration and money and men for the armies. In order to secure the flow of resources to itself the State had to strengthen the control system on different levels and, sometimes, fight localism. In a sparsely populated country, however, such a policy could not be left dependant on total centralization. The State had to rely upon the loyalty of the local church and had to grant a certain autonomy to the farmers and townsmen in the administration of justice as well as in other tasks.

Slowly state power penetrated the local society and sometimes "assimilated" local institutions, but all the time with concessions to local autonomy. In matters of crucial importance this penetration and control was rigorous, as for instance when collecting conscripts and taxes or defending State authority, while in other fields a greater degree of freedom was left for the local society.

Religiously Sweden was a protestant country with a State Church. The religion was the dominant ideology defending the superiority of the State and there existed a symbiosis between the interests of the State and the interests of the orthodox clergy. While the priests taught obedience to the King, he in return made laws protecting the monopoly of the protestant religion and supporting its educative ambitions. The King used the local ecclesiastical administration for civil purposes as well, although the priests were sometimes reluctant to cooperate by supplying population registers for taxation and conscription. In general, however, this mutual dependence was recognized and accepted to the benefit of both parties.

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Sweden was during the seventeenth century a socially relatively homogenous country. Except from a small group of noblemen, administrators and townsmen most people belonged to a farmer's household. There were normally enough farms for everybody in the countryside, and during the wars there could sometimes even be a lack of men able to work on the existing farms. The farms belonged either to the user, the State or the nobility. The most immediate threats to the social position of the farmer were inability to pay taxes or being drafted as a soldier. In both cases he ran the risk of losing his farm. We find such cases during the seventeenth century, but they were not numerous enough to create a landless proletariat of any extent. The shortage of farmers in some areas might sometimes have been an opportunity for the poor ex-farmer to make a comeback.

Even if we find many examples of State oppression in a few cases we must recognize a relatively strong bargaining position for the farmers in seventeenth century Sweden. By the middle of the century the self-owning farmers only constituted a minority of the population, but we cannot consider this to be "feudalization" to the same extent as in some other European countries at the same time, nor do we find a proletarianisation of the size occurring in for instance England.(2)

1.1 THE CIVIL COURTS

This scenario, which meant that the farmers were not totally powerless in their relations to the State and the nobility, holds for the administration of justice as well.(3) All cases, except for some involving noblemen were initiated in the local court, the "ting". In the countryside proceedings were led by a judge appointed by the Crown. He was assisted by twelve farmers. In the towns the courts consisted of a boroughmaster and a jury of important townsmen. In the countryside the primary judge, often a nobleman, usually hired a deputy of lower rank to do the job. This deputy, the "law-reader", was socially closer to the farmers in the jury although he had some legal experience. He often owned a farm himself and knew fairly well the mentality and the needs of the farmers. The 12 jurymembers were all farmers, self-owning or tenants, and chosen in order to give the court district a fair geographical representation.

While in the Middle Ages there was a division of labour between the judge who "read the law and made the sentence" and the jury which made the decision as to the guilt, this division seems to have disappeared over time and the jury began to take part in the discussion about the appropriate sentence. Guilt was established by confession or by two witnesses constituting "full proof". In minor cases, but not when the accused's life was at stake, strong evidence might lead the jury to demand an oath of twelve men (or in some cases twelve women) that the defendant was honest and that they believed in his innocence. Failure to find twelve such men of good reputation might produce a verdict of guilty. Torture, used in some cases on the continent, was extremely rare in local courts. It was saved for a few cases of high treason, witchcraft and other grave things. It is obvious that such a demand for proof led to a strong emphasis on the social status and connections of the defendant. It was not necessary to be protected by a person of high social standing when the case was dubious, but it was important to be accepted among the neighbours to be able to collect a group of oath-makers in some circumstances.

Until 1734 most criminal cases were tried according to the medieval law-books, one for the countryside and another for the town. A special authoritative edition of the lawbook appeared in 1609 and it was used during the

whole century. It was, however, necessary to make some adjustment to changing circumstances by special laws and ordinances and the interpretation of the law could sometimes be difficult. Practise varied locally, which was one of the reasons for the establishment of a court of appeal in 1614. This court was later divided into several for different parts of the country. The court of appeal (hovratt) tried some cases when two noblemen were involved in civil conflicts, cases in which a nobleman was accused of a serious crime and also all appeals made to it about sentences in the lower courts. Gradually the decisions of the courts of appeal became precedents for the local courts, a process which was further speeded up by the controlling functions of the courts of appeal. The local courts had to send a copy of their protocols to the court of appeal each year (a fortunate situation for the preservation of complete series of the sources) and the higher court could intervene in a dubious case. Finally, when university training and practise at a higher court became more common among the local judges, the "standardization of justice" was promoted even further.

A calculation of the types of cases appearing before the local courts shows us their main functions. A great majority belonged to what would be called "civil cases" today, although the division was not clear in earlier centuries. In the countryside these conflicts normally arose concerning the ownership of land, inheritance, borders between villages and farms, unpaid debts, etc., and in the towns we find property conflicts and disagreements on business transactions and other cases natural in an urban setting. The courts were also occupied with matters other than objects of conflict, such as the registration of land purchases, the organization of certain common tasks for the inhabitants of the district, testifying on the economic condition of farms for the calculation of taxes, deciding on local statutes for the hunting of wolves and binding over reluctant participants, etc. The court was therefore also an institution for local cooperation. "Criminal cases" took a minor part of the court's time and a substantial part of the "crimes" were more or less connected with the use of resources in a relatively poor society. The greatest single category of crimes tried were minor verbal or physical assaults often arising from a disagreement about the ownership of property, damage to the harvest by domestic animals or other conflicts about resources. Social status might also be considered a valuable property in local society and accusations of dubious moral habits often caused the accused party to bring the case to court for redress. Sometimes the case only concerned slander or verbal insults but very often an insult had been followed by a physical show off: tearing a person's hair or beard, "pushing" or punching. In a few cases the feeling had been so intense that a weapon had been used, a knife or a hammer. Very seldom did the fight cause serious physical injuries or death. Alcohol seemed to have had a "trigger effect" for many violent offenders. The frequent conviction of verbal insults was in itself a repair of non-material damage, but it was also important means of preventing a conflict from proceeding to more serious consequences. It was in the interest of the local society to preserve the peace as far as possible. A conflict between two neighbours could easily spread to a wider circle of the village's inhabitants.

The reparation of a damage is, during early periods, quite an important aspect of the civil court's handling of sexual crimes. Adultery (whoring) was primarily looked upon as a damage of the injured party of the married couple until the Church had managed to implant the concept of "sin" to its fullest extent. No doubt adultery was looked upon as a sin by the farmers too, but the attitude of the offended party was very important when deciding upon the sentence. It could be milder if the wife or husband intervened, plead mercy and promised to forgive the sinner. The sentences for adultery

became much more stereotyped when the Church's influence on the law increased during the seventeenth century.

Fornication, sexual intercourse between two unmarried persons of different sexes, also displays the secular attitudes in the courts. During the first half of the seventeenth century the male party was the primary target of prosecution and the legal term was often "offending a virgin". The offended party was of course the virgin herself, but also her family. Her opportunities on the marriage market had been damaged, a problem for the family which must support her and, in the future, perhaps also a problem for the local society. Fornication with a woman who had previously been found guilty of the same crime resulted in a lower fine. A promise to marry the woman caused the court to make the same reduction or sometimes even to abstain from punishment. It seems as if the law was initially used primarily in order to force the male party into marriage, while premarital intercourse between two parties who accepted marriage at one resulted in no prosecution at all or in a very small fine. The attitude became more severe as the religious dimension became more pronounced by the second half of the century. This changing attitude to prosecution and punishment must be borne in mind when using the figures of convictions as a measure of premarital intercourse.

There is no doubt that theft was looked upon as a serious crime and treated in consequence. The penalty for repeated theft was often death in theory, but in practice many thieves were pardoned and sent to hard work or were whipped. The thief was in a dangerous situation if the offended person or the inhabitants in the district feared that he would carry on as a criminal or if they had lost their patience with him. If not, they might plead mercy when the sentence was sent for confirmation (which had to be done with all death sentences) to the court of appeal and the King. Poor people who had no resources to settle the case through mediation outside court were more likely to be brought to court than farmers who could repair their misdeeds. If, in addition to that, the offenders were strangers and had committed several crimes, the chance of a severe punishment was even greater. The social network turned out to be a very selective factor for the prosecution and punishment of theft and other property offences, which must be kept in mind when analyzing the number of convictions.

High treason, planned murder and other severe crimes disturbing "the King's peace" were highly infrequent in the history of a local court. While some of these crimes were certainly not wanted by the local population, some were less of a local problem than a threat to state authority. When they occurred they were sometimes sent directly to higher courts, sometimes tried at the local court but sent to the court of appeal for further consideration. Although highly important for the State these cases were occasional sensations at the local court and not part of its normal work.

Increasingly more important and delicate were, on the other hand, the handling of other interests of the State versus local people concerning the use of local resources and the regulation of trade and communications. Inability to pay taxes resulted in a permission by the court to take what could be taken of mobile property or to confiscate a house or a farm. The State's urgent need for money resulted in a rather rude policy towards those who could not pay their taxes. This is one of the cases in which the local court and its 12 farmers on the jury found themselves in obvious conflict with the interests of the State. No parish wanted to increase the burden of poor relief by taking away the means of economic support from its inhabitants, but the law had to be obeyed and the King's men made certain that it was. Confiscations were "civil cases" but the conflict surrounding them could

sometimes lead to actions that were punishable. In those cases the tax officials were protected by "the King's peace" and by their status, but this does not mean that the farmer was powerless towards the State agents. Now and then a tax collector was found to have acted beyond his authority resulting in a warning or even a recommendation of dismissal by the court. Things were easily known and discovered in the local society and an unpopular official had to be careful in his administration. This give and take and bargaining between the local society and the State's demands is an interesting area which should be a field of further research.

The native Swedish soldier was supported by a system which meant that a small group of farms had to pay for the soldier's equipment and to give him enough money or land to live on with his family. Many conflicts arose between the State and the farmers or between the soldier himself and the farmers concerning the fulfillment of these obligations. Failures to meet the obligations had to be punished and the conflicts sometimes resulted in insults and physical violence. The jury members were farmers themselves and understood the problems of their colleagues. In economical cases the soldier was often supported by military officials, but in cases of insults and fights he was usually standing the trial alone. The percentage of soldiers in cases of assaults is certainly higher than their part of the population and one explanation might be the inherent hostility towards the "parasite" soldiers among the farmers. This factor is, however, hard to separate from the fact that the soldiers had been used to violence in the wars. In both cases we may conclude that soldiers were not a totally integrated part of local society, which accounts for their relatively frequent appearance at court.

The building of ships, the production of saltpetre for gunpowder, the iron mines and iron foundries were of great importance to a state in almost constant war. Wood in great quantities was needed and a number of regulations were introduced to protect the forests from exploitation by the farmers. It was forbidden for the farmers to cut oaks and beeches without permission from the court and they were only allowed to use the trees for their own consumption. Unrestricted burn-beating was forbidden for the same purpose. These laws and the restrictions on hunting deer and other valuable game were not popular. While the organization to capture criminals was generally weak and dependant upon the cooperation of the inhabitants, special officials were in charge of the control of the forest laws. They made regular inspections and brought a number of trials to court. Priests, noblemen and wealthy farmers were also found to be breaking the regulations, an indication of the widely spread opposition. The fines were relatively high, but the illegal cutting of trees continued until the laws were changed radically giving the farmers more control over their own forests in 1789. There is no reason to think that the farmers inside or outside the jury cooperated more than necessary in catching these offenders.

Regulations for the buying and selling of goods in the countryside also created discontent. The towns had special privileges of trade and the King had income from the tolls paid when bringing goods for sale to a town or out of the country. The cases brought to court according to this law were few, but the lack of interest to witness and prosecute among the people makes it hard to estimate the real number of lawbreakers.

Finally, when listing the demands and regulations of the State we must also include the burden of transportation put upon the farmers. Transportation of soldiers and goods for the crown occurred now and then, and the farmers had to supply horses and carriages. There had to be an inn in almost each parish

where travellers could sleep and eat for a fair payment. Being an innkeeper meant a certain relief from taxes and some income and was not altogether an unpopular side-occupation for a farmer, but the law also declared that the farmers had to transport the travellers from one inn to the next for relatively little payment. The demands came without any consideration of the farmer's need to use the horse on his farm. When looking in the court records we find that the burden of transportation caused conflicts almost every year. Since the innkeeper was responsible for the transportation of his guests, he had to act as prosecutor when his neighbours had refused to cooperate for one reason or another. The burden was acknowledged, although reluctantly, by the parish and the conflicts were mainly concentrated to the innkeeper and other farmers as to who should do the transporting this time, whether the farmer had legal reasons to refuse, etc. Fines were relatively low, and the farmer might sometimes have preferred to pay instead of carrying the burden of the transportation.

When leaving this presentation of the local courts and the types of cases handled we have left out a number of offences which were relatively infrequent, for instance bestiality, witchcraft, etc. These were, even if they are counted all together, rather few. The overwhelming majority of cases belonged to those types mentioned above. It is therefore possible to make a summary of the role of local courts in seventeenth century Sweden. First of all we have seen that most of the time was not spent on crime control but on solving questions of cooperation in the local society and on trying civil cases. Secondly, many criminal cases had originated in the struggle over the resources, not primarily in the form of theft which was relatively seldom prosecuted, but in the form of insults, minor fights, reluctance to obey the State's forest regulations, trade regulations or demands for transportation.

This brings us to the first conclusion, that the local court was originally and during the seventeenth century still to a great extent an institution for the solving of conflicts within the local society and as such widely accepted and needed by the inhabitants. This does not, however, mean that the court was the only instrument for conflict solution and control of unwanted behavior. Many things were settled between the farmers with the help of neighbours and other cases were taken care of on the parish level. The court was a resort when other solutions failed. Many petty thefts were never prosecuted and many insults and fights were taken care of before they reached the court. This was not a failure for the local judicial system in the eyes of the inhabitants, who were primarily interested in rehabilitation, compensation and keeping the peace, not in punishment. We may compare this picture of Swedish local justice in the seventeenth century with the one given of its English counterpart in some recent articles and books.(4)

The willingness to prosecute, the possibility to get a verdict of innocence and the type of punishment often depended on the accused's status in the local society. A settled farmer could come to terms with his enemies much more easily than a poor stranger. The members of the jury and the inhabitants in the districts had a suspicious, pragmatic and hard attitude to 'habitual criminals' or people they did not know.

We can also see that there was an area within the court's obligations where the farmers in the jury and sometimes even the judge were less interested in taking action: the protection of a number of demands and regulations by the State. The King had to appoint special officials to defend these interests and there was usually very little cooperation from the farmers. Only when the case was very obvious can we be sure that it was brought to the ears of

the officials and finally to a conviction in court. The "dark figure" for cutting wood, hunting deer and similar crimes was probably very high.

1.2 THE CHURCH

In order to obtain a relatively complete picture of crime control in the seventeenth century we must also take the activities of the Church into account, especially what happened on the parish level.⁽⁵⁾ In every Swedish parish there was a vicar and a "parish meeting" trying to keep the "church discipline" as tight as possible. The concept of "church discipline" was not completely clear, but some main elements concerned church attendance, protection of the sabbath from acts of profanation such as cursing, drinking, quarreling, fighting or even working, being certain that the children were learning the art of reading and knowing parts of Luthers Catechism by heart, and making unruly spouses keep peace with each other.

Yearly catechetical meetings in the villages with an examination of the villagers' knowledge was one way of control. During these meetings any type of "unrest" in the village could be discussed, warnings and admonitions could be given to those needing it and more serious cases could be brought before the parish meeting later on. What we know as village-watchmen and "six-men" were appointed in order to watch upon the church discipline, to intervene in conflicts and to report serious cases for further action. This unhidden interest in the lives of other people was sanctioned by the Bible itself. Unrest among some members of the parish or even the sins of one member of the parish was the concern of the whole congregation, one member's sins became the guilt of all.

The records of "the parish meeting" and of the council of elders (established during the eighteenth century) show that the interventions of the local church in the lives of the parishioners were frequent and covered many aspects of life. The education of children, the quarrells in the family and between neighbours, drinking habits, minor fights and juvenile petty thieving all were included in what could be discussed and punished by the local church. In addition the "six-men" also helped the local civil policeman, both categories being trusted farmers doing their jobs on a part-time basis, investigating crime and bringing the criminals to court. Sometimes the six-man or the parish elder and the jury member in the civil court was the same person, which strengthened the ties between civil and ecclesiastical control and justice. Refusals to obey the decisions of the parish meeting in matters of church discipline brought the accused to the civil court for more severe punishment.

The difference between the civil court and church discipline, in theory and mainly also in practise, was that the civil court was supposed to punish when appropriate while the Church's first aim was to restore the peace and to reconcile between the offender and the offended and between the offender and God. Local church justice was quicker and more informal and it was usually milder. When possible many prosecutors as well as prosecuted had reasons to choose this justice rather than the more formal civil justice. There was a recognized overlapping between the two systems, but sometimes the Church intervened in cases that should have belonged to the civil authorities according to the law. The King sometimes warned the priests for such abuses of power, but usually the division of labour went on fairly smoothly.

When the religiously motivated attempts of the priests to strengthen the church discipline during the seventeenth and early eighteenth century met local "secular" opinion in the parishes it was not always possible to

achieve the goal at once or totally. Concessions had to be made to local customs, for instance in parts of Sweden where premarital conception was accepted as long as it had been preceded by a betrothal according to the old civil medieval laws. Some "heathen" customs were never rooted out, but in most cases the Church was successful in the long run. One of the reasons for success, besides the threat of sheer oppression, was probably that part of the scheme was accepted as reasonable by the local population. Nobody approved of fights within the family, wife beating, too much drinking resulting in quarrells and violence, or other nuisances. When the farmers themselves were allowed to participate in the control of such behaviour it was a delicate task but not altogether a despised duty. The work had to be done in one way or another and the farmers were by tradition used to being mediators and judges between their neighbours in the civil court. The connection between the two systems of justice is further emphasized by the name of the dean's yearly inspection in the parish which was called "the dean's ting", e.g. the deans court using the traditional name of the civil court. Spying and minding other people's business was a serious threat to privacy, but it was to some extent accepted and performed by most parishioners.

When moving to the national level it is easier to point out - by modern liberal standards - rather embarrassing results of the Church's impact on the law. The bishops convinced king Erik XIV to make references to the Mosaic law when he acted for more severe punishment of some crimes, for instance sexual crimes in the 1560's. His younger brother, king Charles IX published the medieval laws still in use in 1609 declaring that some offences not mentioned in the law should be treated in accordance with the Mosaic law. By this declaration adultery was a capital crime as was infanticide and some other types of sins. The local courts had no possibility of giving a milder sentence for these crimes, since it was not possible to act against the will of God by a court decision.

Even if the majority of the death sentences were never executed, but changed by the king to heavy fines or hard work, the impact of the Mosaic law was considerable during the seventeenth century and it was not until late eighteenth century that it was definitely weakened. The priests were the chief opponents to king Gustavus III's partially successful attempts to abolish the death penalty for a number of crimes. The king's laws to improve the situation of unmarried mothers in order to prevent infanticide was called "the whore placate". The difference is striking between the relatively mild sanctions in matters of local church discipline given by the priest in cooperation with his parishioners and the severe attitude of the leading ecclesiastical circles acting as an Estate in the Parliament. Theologically the paradox can to some extent be explained by the division between "the Word and the Sword". While the Church was to teach, convince, warn and forgive, it was the duty of the Prince to fight all the vices in the world with all available weapons. The Church should not stain its hands with the blood of its members, but it did not mind if the State suppressed vices with rope, ax and sword. If possible, however, the convict was to confess and repent in the presence of a priest before he was brought to the scaffold.(6)

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When discussing the control of crime in seventeenth-century Sweden we must therefore include the activities of the Church, nationally influencing the law and locally participating in actions against a great number of offences of a type which constituted a considerable part of those handled by the civil courts too. More serious thefts and violence and regulations concerning the civil State exclusively were only tried by civil courts, but things

related to morality and manners in a wide sense were the object of both ecclesiastical and civil justice. The severe attitude of the Church on the national level asking for civil actions is contrasted by the mild ways of handling things within the parish. It was the latter form that most people met with in their daily lives and it was sometimes preferred to formal civil justice. Any calculation of the number of actions against petty crimes has to include what happened at the parish meeting and at the council of elders. The source situation is often problematic and we do not know if every step against offenders was recorded even when the protocols survive, which makes it almost impossible to make even a rough estimation. We can look at the interventions of the civil courts as a study of an institution and we can look at the recorded interventions of the local church for the same purpose, but we have great difficulties in making a quantitative study of the total control system, not to mention the actual number of certain types of criminal behaviour in seventeenth-century Sweden. By a careful examination we might sometimes be able to explore the most important areas of social control and its development over time. Sometimes we might also have a hypothesis as to whether certain types of behaviour were actually increasing or decreasing.

1.3 THE CIVIL AGENTS OF CONTROL

In order to understand how this local system of control was working, it is of course important to know as much as possible about the formal control agents, their values, ambitions and competence. In each province of Sweden a landshövding (governor) was responsible for the local defence, the maintenance of law and order, the detection and investigation of serious crimes, taxation polls and tax collection, control of vagrancy, execution of sentences, etc. In each härad (court district) the governor's duties were delegated to the häradsfogde, the chief representative of the crown in civil as well as in criminal cases. A number of länsmän (local constables) were appointed by the governor to assist the häradsfogde in all his duties. The häradsfogde was recruited from a higher social level than the common farmers, while the länsmän were farmers who worked as constables on a part-time basis. The länsmän usually got his farm freed from taxes and part of the fines as a compensation for his work. The main tasks belonging to the modern police were handled by the länsmän along with other duties such as collecting taxes and acting as the King's prosecutor in criminal cases. Although he could sometimes call upon assistants (fjärdingsmän) it is obvious that he did not have much time for active 'crime detection'. He would usually react upon insistent rumours or obvious cases. While the länsmän was economically compensated for his work the fjärdingsmän had little or no salary.

The crown had several reasons for appointing special officials for the supervision of the forests, as mentioned above. The jägmästare was responsible for the detection and conviction of such lawbreakers. There were several ranks among the jägmästare. The higher officials were no doubt above the social level of a farmer, while the lower ranks seem to have been recruited among the peasantry and the latter were probably the ones who had the greatest opportunities to discover a crime. The share of the fine could be substantial, a welcome compensation for an unpopular job.

The execution of corporal punishment was thought to be a very shameful occupation, which made it impossible for the länsmän or the fjärdingsmän to participate in such activities in other roles than as supervisors and witnesses. It was difficult to recruit a hangman, who often turned out to be an ex-criminal himself or sometimes even dealing with dubious affairs once appointed. When a proffoss was appointed he was to help the länsmän in his

investigations, especially when an arrest had to be made, but most 'normal policework' seems to have been done without the help of people with such bad reputation, probably in order to avoid public nuisance.

Even in the towns the agents of control were predominantly laymen 'amateurs'. The lansman in the countryside corresponds to the byfogde in the town, the latter being unpaid but free from certain taxes. He was assisted by the stadsvaktmästare, who was in charge of the town guard, a group of 'part-timers' with little salary. No town had a professional police corps during this period.

1.4 THE SOCIAL POSITION OF THE CONTROL AGENTS

Part-time laymen filled the lower ranks of Swedish local administration before 1800. Except for the county judge, the häradsfogde and the vicar most agents of control were farmers in the countryside and tradesmen in the towns. Their social positions and their ideologies decided their efficiency and their eagerness to take action whenever the law called upon it.

Before the later part of the 17th century the social distance between these agents of control and common people was rather small. Even the judge and the vicar had farms, sometimes perhaps spending more time on agriculture than on judicial or religious matters. The judge understood the economic and social conditions of a farming society and he would listen carefully to the advice given by the jurymen and other inhabitants in his härad. In conflicts between the farmers and the state he would know the problems and needs of the farmers very well from his own experience.

It is not surprising to find higher authorities sometimes complaining that the court was not taking care of the crown's interest enough. It was sometimes said that the judges were ignorant of the law, paying too much attention to the farmers' opinion expressed in the jury. When the parishioners in Hjärtum rioted against the King's decision not to appoint their candidate as vicar in 1693, the King brought the case before a special court because he feared that the local judge might be too understanding towards the rioters. During the first decades of the 17th century the court handled a large number of applications from farmers who asked for tax reduction, because the farms had been deserted or badly taken care of during the years of war and hardships. In a report on the court on the island of Öland it is claimed that the inspections made by the länsmän and members of the jury were highly biased in order to ensure that the farmers's application would be accepted. My own investigation of the härad of Gullberg shows that jurymen from the farmer's parish testified that the farm was in bad shape and that the judge hardly ever questioned their testimony. Lack of manpower working the farms also seems to have supported the bargaining power of the farmers towards the tax officials in that particular period.

The judge was of course in a delicate position when he and the jury were to decide in conflicts between the crown and the farmers. Sometimes he avoided the decision by declaring that he was not trained enough in the law, sending the case to the hovrätt (court of appeal). On the whole, however, the court records show that the judge was often sympathetic to the local population and not a mere protector of the State's interests during the 17th century.

Unfortunately we know very little about how jury members (nämndemän) were elected. Usually the record only tells that a new nämndeman had sworn the oath and taken a seat among the others. Cooptation might have been a very common procedure and quite certainly the judge would give his approval of

the election. A nämndeman was not only sitting in court, but also often taking part in the investigation of crimes in his home parish, serving summons to parties and performing a number of tasks which, in modern legal theory would be highly doubtful for a person who would be deciding in the case later on. The distinction between 'police matters' and 'court matters' was, in other words, hard to find.

There were of course differences in wealth between households in the Swedish countryside during the 17th century, but the majority of the population belonged to farmer's households with a plot of land for their daily necessities. The nämndemän were often recruited from among the more wealthy farmers, but this did not mean that their set of values and interests were fundamentally different from those of the other farmers. Economic or personal prestige played a role for appointment and being a nämndeman added to their prestige. In performing their duties they normally tried to act in the interest of the majority of the parish. When that interest was in conflict with the interest of the State and its laws on cutting trees, hunting, taxes, etc the nämndemän would have to find a compromise or surrender under the power of higher authority, but normally they would not do so voluntarily. In evaluating the efficiency of the nämndemän we must therefore construct a means of measurement which is not always the same as that of higher authorities, even if the State and the farmers often had the same goal: keeping the peace, solving conflicts about ownership, etc. We must not forget that the great majority of cases at court concerned local matters of land ownership, small disputes, and other things in which the State took a very small interest other than asking for a peaceful settlement.

During the 17th century the most important policeman in the countryside, the länsmän, often started his career as a village watchman and became a member of the council of elders and a nämndemän before his final appointment. He was a farmer himself, often the son of a nämndemän or a länsmän. Being a länsmän was not always life-time work. Some of them retired after a few years and carried on as farmers in their local society. A länsmän had every reason to share the values of the parishioners and he was dependant upon the cooperation of the neighbours to fulfill his mission. His position was often delicate when he had to take unpopular legal actions. Sometimes the governor had to issue letters of protection against those who threatened him or prevented him from doing his job.

As time went on, the länsmän became more of a civil servant and less of a farmer. The process was slow, but by the 19th century the länsmän was more often than before looked upon as a 'superior' in the local society. This was accomplished in the light of a general trend of 'professionalization' of local administration. When 'crime', as James Sharpe has described for England, was more often identified with the proletariat and less with farmers and wealthy people[^], the länsmän also became more of a 'policeman' and less of a mediator between the local society and higher authorities. Often, however, the farmers wanted his assistance to control the movements and habits of 'the idle population'.

The same development from 'amateur' to 'professional' took place among the fjärdingsmän, the assistants of the länsmän. In the early period afjårdingsmän had no salary at all and the job was not until this century that the duties of the fjärdingsmän increased and, eventually, some of them got part-time or full-time salaries. Before that, the fjärdingsmän was an ordinary farmer who did what he was told to do and nothing else. From all points of view the best thing to do was often to prevent things from advancing to the courtroom. As late as after the Second

World War a fjärdingsmän was employed in my home parish on a quarter-time basis. Once a superior police officer called him and announced that there would be a control of the cars and bicycles travelling on the road through the parish (drunken cardrivers, lights on bicycles, etc). The announcement caused him to take his bicycle and warn everyone he met on the road for the planned control. This fjärdingsmän's willingness to contribute to the statistics on minor road offences was very limited, as limited as it might have been among his 17th century colleagues to report small offences.

In conclusion then, most agents of control in the Swedish countryside before 1800 were trusted members of the farming society. They were often a little wealthier than average and their duties were often passed on from one generation to another. Their values were the values of the local farming society, although they sometimes found themselves in delicate positions, either as defenders of the State's demand for money and subordination or of the Church's demand for religiously acceptable manners.

1.5 THE EFFICIENCY OF THE AGENTS OF CONTROL

Some scholars have, during the last years, questioned the opinion that local officers in England, before the emergence of a modern police corps, were incompetent, of dubious moral standard and unable to do their jobs properly. Keith Wrightson identifies 'two concepts of order' in seventeenth-century England. One is the concept of higher authorities, the other is the concept of the local population and especially the local 'elite'. These two concepts are not altogether the same, which sometimes creates conflicts. The State wanted 'a pattern of authority and an ultimate scheme of values --- a stable and harmonious ideal of human affairs which eliminated the possibility of rebellion, of social conflict, of the sins which might stimulate a stern deity to chastise his /God's/ disordered people with his judgements of dearth, pestilence and war'. On the local level the ideal was more of 'a negative absence of disruptive conflict --- to avoid, or at any rate contain --- conflict'.

These two concepts were not always in conflict and, as social stratification went on, the local elite tended to accept more of the regulative efforts of the State and the clergy. Wrightson refers to his own research and that of other scholars showing that constables and jurymen were, as in Sweden, ordinary members of their communities, often with some personal prestige. The efficiency of these officials must therefore be seen in the light of what was the 'local concept of order'. During the 'puritan' period in English history some of them cooperated in the regulative offensive against all kinds of vices, although the intensity varied according to local religious and social circumstances.

Often, however, their initiatives probably never reached the courtroom. Warnings, private settlement and other unofficial measures were probably often a better solution than open conflict. The number of offences prosecuted in court might therefore be a bad measure of either the effectiveness of the constables or the real level of misdemeanours. James Sharpe claims that one of the reasons why the number of regulative offences decreased by the end of the 17th century is that the local elite had new weapons to control the poor, especially "the poor laws". It was not always necessary to go to court.(8)

This picture of seventeenth-century England is not unlike the impression one gets of Sweden during the same period. The agents of control were recruited from about the same social strata and their values and objectives were

similar. Each country does, however, have its own history, a framework of its institutions. First of all, the social structure of 17th century Sweden was far less complicated than the English counterpart. While in England proletarianization had advanced to a point at which one can identify a substantial group of landless people, Sweden was still almost entirely populated by farmers and a handful of craftsmen and soldiers. There were few signs of 'unemployment' in 17th century Sweden, rather a lack of manpower to work the land in certain areas. The reason for this is, among other things, the loss of young men in the frequent wars. Some farmers had to leave their farms because they were unable to pay their taxes. No investigations have been made about the destinies of such farmers, but it is possible that some of them found a place as farmer-tenants of the crown or the nobility after a while, since the number of poor landless people is small in the available population records.

Consequently, the need to control a growing proletariat cannot have played an important role in 17th century Sweden in a way that it did in England at the same time. There were vagrants and migrants in Sweden too, but until the middle of the eighteenth century Sweden was predominantly a farmers' society. One of the roles of the *länsman* was to control the usually small number of vagrants and runaway soldiers, gypsies and other people on the roads and in the forests. In such activities he had the full support of the farmers on the jury and at home in the parish. Although those people were a nuisance to the settled population, they were by no means an important subculture to be feared. Some thieves could be hard to catch at once, but the local population certainly cooperated with the authorities as much as possible. The dark figure of unrecorded thefts was perhaps larger than today, but the rate of convictions may not have been less.

It would be utterly naive to assume that the farmer was protected from state oppression in forms of conscriptions and taxes, or from encroachments by the nobility. Despite this, however, the farmer was not always powerless when defending his interest against the authorities. The law gave him relative security as long as he could pay his taxes or fulfill his contract with the landowner. The *länsman* had to be careful when he was acting on behalf of the crown. His need of authority and prestige prevented the courts from too strict observation, but there are enough cases showing that trespasses could be punished severely. Some *länsmän* were discharged 'on the request of the whole *härad*'. Even a *häradsfogde* could be tried for breach of duty if he had done wrong to the farmers. Especially the tax collection was a difficult task, during which it was easy to make a mistake even unintentionally. Such a mistake could be used against an unpopular civil officer and the court would find it hard to forgive, especially if the tax collector was also accused of having cheated the Crown. A certain restraint was therefore commendable in the *länsman's* contact with the farmers.

The *länsman*, the *fjärdingsman*, the six-man and the village watch all acted in their local contexts, impregnated by the thoughts of the locality and forced to take the local customs into account. There are certain areas in which the concepts of the authorities and the concepts of the locality were quite the same, for instance concerning the treatment of vagrants, habitual thieves and other irritating marginals. Every 'honest citizen' cooperated in this kind of social control. The moral norms concerning religious habits and sexual behaviour varied over time and space and the controlling laymen had to act under the sometimes diverging opinions of higher authorities, clergy and neighbours. In order to keep the social peace they had to find the right balance between these pressures and their efficiency has to be evaluated accordingly.

2. LOCAL JUSTICE FROM LATE SEVENTEENTH CENTURY UNTIL 1850

By the death of king Charles XII in 1718 the Swedish state was in many respects exhausted. Most of the Baltic provinces were lost and the people had suffered economically from the wars. On the other hand, the State was stronger than ever from a domestic, administrative point of view. The bureaucracy was larger than before. In the local judiciary the "deputy system" was abandoned and the judges had better university training and more practice from the courts of appeal. Localism in justice had been effectively curbed and the influence of the laymen in the jury had diminished. The new judges were more selfconfident. They introduced a professional language in the protocols which increased their technical grip over the legal process and the courts of appeal made certain that their decisions were in accordance with the written law and the doctrine. This doctrine was still, although influenced by Roman law, to a great extent conservative and the new lawbook in 1734 was mainly a codification of the development during the last century, not an attempt to introduce novelties.

The strength of the State had showed itself quite openly in the integration of the former Danish provinces of Skane, Blekinge and Halland after 1680. Swedish law and Swedish church rules were rapidly introduced, and within a generation the children had been taught the Swedish language.(9)

The Church's campaign for literacy and church discipline continued successfully. The Church law of 1686 established the extent and limits of the Church's activities and during the first half of the eighteenth century the ecclesiastical parish administration found its definite form. This happened without any observable greater resistance from the parishioners. The cooperation between the priests and the farmers in the parish meetings and the councils of elders seemed to work fairly smoothly, except in individual cases, when the vicar for one reason or another was in open conflict with his congregation. As a matter of fact ecclesiastical participation in the control of minor sins and misdemeanors continued throughout the eighteenth century in most parishes and in some until the middle of the next century.(10)

There is unfortunately not much research done so far on the extent of the farmers participation in local justice during the eighteenth century. They continued to sit on the juries of the district courts and they continued to take part in the administration of church discipline. Their eagerness to take a more active responsibility for the prosecution and control of crime through the channels of the local secular courts is particularly hard to estimate so far. English scholars claim that the local elite in their country integrated the norms of the higher establishment during the seventeenth century. The result was that they were more prone to control deviant behavior and to bring more offenders to court. Such a development would be in line with Norbert Elias' theory about the increased sophistication spreading from the higher to the lower social strata during this period. In the English case the development was accentuated by the widening cultural gap between the local elite and the growing proletariat.(11)

Such a development might also have taken place in Sweden, but we will have to wait for further evidence before we can draw any definite conclusion. Proletarianization came later in Sweden, and the 'class dimension' was not so strong until the end of the eighteenth century. On the other hand, as far as the available fragile statistics show, everyday violence was less frequent in the beginning of the eighteenth century than one hundred years before. We have strong reasons to believe that the end of the many wars improved the

situation. The wars had made many young men used to violence to an extent which probably influenced their mentality back home, and the wars put great economic and social strains on the population which could create violent behavior and unrest. Once the local society became accustomed to a more peaceful situation its sensitivity towards violence and unruliness increased and official reactions against disorderly persons became more common. Between 1700 and 1749 prosecuted violence diminished in at least one Swedish court district, Östra Göringe in the former Danish province of Skåne, an area which had been hit severely by the war activities and economical distress during the seventeenth century. The decline was followed by an increasing number of offences against church laws tried by the secular court.(12)

It is obvious that the ecclesiastical campaign for better manners continued and probably increased on the parish level in Sweden throughout the eighteenth century. It remains to be seen if the emphasis was slowly moving from prosecuting minor violence in the secular court to the warning and mildly punishing of disorderly people by the council of elders. The increasing distance between the farmers and the civil justice could have favoured such a process, but we know too little to draw any conclusions yet.

The seeds of change existed, however, already by the middle of the century. Population growth started and resulted in a rapid proletarianization during the first half of the nineteenth century. The power of the Church was not undermined immediately, but diverging interpretations of the creed worked in that direction and the effects could be observed in the religious split between the State Church and voluntary 'free churches' some decades after 1800. Secularization spread during the second half of the nineteenth century and church discipline was impossible to maintain in most parishes after 1850. Liberal political ideas were used in defense of a wider degree of freedom for the individual's behaviour, thereby weakening religious discipline.

The farmers continued to participate in the affairs of the parish, but the agenda was reduced to purely secular matters after 1850. Instead of maintaining church attendance, the religious education of children and similar things, the controlling function of the parish administration was to regulate the system of poor relief and to prevent the immigration of poor people into the parish. Later on, as the temperance movement successfully spread its ideas, the secular local authorities took over the former religious task of suppressing drinking, but the rest of the scheme for moral education and control was almost totally abandoned on the micro level. The compulsory school, established in 1842, became the most important instrument to teach the children good manners and literacy.

The social distribution of all persons convicted in court still showed a substantial proportion of 'established' persons - farmers, craftsmen and others, but they were largely concentrated to specific types of offences such as breaking state regulations concerning the maintenance of roads and other trifles, while the proletariat was in majority among the serious criminals. It was quite evident that 'real crime' as opposed to minor offences had a strong class bias. Criminal justice was largely preoccupied with the control of poor vagrants, poor thieves and workers drinking too much in public places. New laws were for instance made several times during the nineteenth century in order to control the unemployed and to put them in institutions for compulsory work.

This new emphasis on the control of the growing proletariat resulted in an increase of people in prison for theft, vagrancy and drinking during the first half of the nineteenth century. There had been an increase of property offences during years of harvest failures even in previous centuries, but the importance of this factor was even greater during these decades. Many commentators looked upon these figures, drew the conclusion that the poor belonged to a 'criminal class' and asked for action while the liberals blamed the social conditions and looked for ways to improve these conditions.(13)

James Sharpe has described a similar situation in England during the seventeenth and eighteenth century.(14) In Sweden the stratification of society did not emerge to its fullest extent until after 1800. The evidence in the judicial records was, however, the same: The control system shifted its emphasis from the improvement of the manners of the whole local population to the protection of 'honest people' from abuses of the lower classes. Much could be done within the parish through "the poor laws", but the local elite was also in need of help from the State and the civil courts. Whereas there had been a small number of 'outsiders' to be taken care of in previous centuries the group increased strongly after 1800. This migrant population was not easy for the parish authorities to control alone, because it was less integrated in the local network. Imprisonment became the most important instrument used to get rid of them and to try to restore their manners instead of warnings and mild punishment by the Church.

The control became more formalized, more anonymous and further away from the participation of the parishioners. Professional police forces were built up in the larger cities and even the local constables in the countryside became more professional during the nineteenth century. By the end of that century new forms of informal justice emerged in the trade unions, the temperance movement and among the 'free churches' but this control functioned in a pluralistic society and mainly for people who had joined the associations voluntarily. In many ways the functions and the effects of justice had not changed. One might say that justice had dressed itself up not as a farmer or a townsman or a vicar but as a professional civil state servant, although still performing the same tasks. In one respect this uniformed justice was less totalitarian and produced more unambiguous effects than the complex network of the previous society. In a formal sense equality before the law was greater than it had been before.

3. WHAT WAS THE IMPACT OF CHANGE?

When trying to estimate the more immediate effects upon crime prevention and upon the choice of target groups for control and punishment the task becomes harder. Social position was important in deciding the risk of being severely punished throughout our period independent of the changes. The more established part of the population was mainly appearing in cases where the penalties consisted of minor fines while the poor 'outsiders' got rid of the rope and the whip but went to jail instead.

It will be even more difficult to evaluate the effects on crime prevention and the influence on actual crime by the two systems. It is easier to measure the number of crimes reacted upon by the new system since they are usually recorded, which was not always the case when the Church and other more informal forces participated in the process. We cannot, therefore, take the number of convicts during the seventeenth and eighteenth centuries and compare it directly with the equivalent number during the nineteenth century. The number of some crimes should first of all be connected with the

changing ambitions of the authorities and not with the changing morality of the people. Others, such as serious violence, have to be explained by the changing attitudes among the population and by the strains put upon the local society in the form of wars, economic distress and other conflicts - plus the consumption of alcohol, the classical trigger of violent action.

We find few wealthy people accused of theft throughout history, but very few among all poor were convinced of stealing during their lives. The second fact might be taken as proof that theft was not directly associated with economic factors. It must not be denied that other factors than poverty contribute to the figures of property offences. A society where theft is condemned severely and where a tight net of control is spun around each individual will probably produce less thieves, like the orthodox protestant Swedish society produced relatively few children born outside marriage. However, practically fruitless, we might speculate that there would be less stealing today if social control was tighter and if every child had to read the ten commandments every morning.

Turning back to the economically weaker society before 1850 there is, in my opinion, no way to escape the impression that the social structure, the distribution of wealth between different individuals and the fluctuations of the local economy are the key factors when explaining most property offences. Each harvest failure produced an increase of crime and a deeper depression resulted in higher crime figures. When examining these figures by social status we find in nineteenth century Sweden that the economically weakest strata increase their share of the convicts during the slumps.⁽¹⁵⁾ The fact that everyone classified as poor in the population statistics is not convinced of stealing or does not steal at all can easily be explained. Poverty is relative and we do not have exact measures of each individual's economic situation. Secondly, there is of course a personal factor deciding when someone will resort to theft. Pronounced economical stratification might contribute to the breakdown of restraints against theft among the poor, but this does not mean that theft was normally part of a 'class war'. All evidence in pre-twentieth-century Sweden as well as in other countries point to the fact that most victims of thefts were relatively poor themselves while the rich had better means of protecting their property.

The most obvious connection between the change from locally based justice to professional justice and a professional control system and the development of crime can be found in the change of emphasis. While locally based justice was primarily meant to solve local conflicts between individuals in the local society and to be an instrument of cooperation between its inhabitants, modern justice takes a more "national" standpoint. Modern justice is based on more abstract legal theories than the rather pragmatic attitude of the district courts of seventeenth-century Sweden. The path to the present situation was slow but straightforward. The State and the Church "assimilated" local justice and the values and regulations of higher authority penetrated the work of the courts. In many ways the farmers and townsmen agreed with the values of the higher authorities, which explains why the transition went on without too much open conflict. The concessions to local autonomy and the keeping of the formal structure also contributed to its success. The revolution did not take place in total conflict with the people. Still, one cannot disregard the thought that a number of trials in modern courts would take another direction or would never be opened if the justice was dominated by laymen with a perspective based on the values of the local society, whatever these values might be in the present pluralistic society.

It has been argued in this report that these changes might not have influenced the 'real' crime rates in the short run. The frequent prosecution of violence in the courts and in the parishes was probably one contributing factor reducing the number of insults and fights among the people, but nothing indicates that this type of behaviour increased immediately when church discipline ceased to exist as a formal legal instrument. Infanticide certainly went down when the control of sexual behaviour was abandoned during the nineteenth century. Theft was probably very little affected by this type of control system, only the absolute figures of convictions were influenced by varying propensity to prosecute at court instead of taking other actions against the thief.

The connection between the type of judiciary and control system and the development of crime over time is obviously complex and sophisticated, and yet a problem that we cannot ignore. It would be wrong to claim that crime is just a product of the judicial system but it would be equally stupid to look upon justice as a passive caretaker of society's failure. There is a constant dialectic process between the society, its crimes and its justice of which the historian can only catch small but fascinating glimpses.

FOOTNOTES

- 1 This article is based on my project in progress on the same topic. The main part of the project is a study of court records in some Swedish court districts from about 1600 to the beginning of the nineteenth century. The project is being done in cooperation with professor Eva Österberg, Uppsala, but she has no responsibility for the flaws that might appear in my article.
- 2 Part of this presentation can also be found in **Jan Sundin, Control, punishment and reconciliation. A case study of parish justice in Sweden before 1850. Tradition and Transition, The Demographic Data Base, Umea University 1981.** On the situation of the farmers in seventeenth-century Sweden see Margareta Revera, 1600-talsbönderna och deras herrar. Den svenska juridikens uppblomstring..., Institutet för rättshistorisk forskning, Serie 2, Band 9, 1984.
- 3 On the history of Swedish law and legal institutions see: J.E. Almquist, Processrättens historia, 3rd edition, Lund 1974; Erik Anners, Svensk straffrätthistoria, Part 1, 3rd edition, Stockholm 1977; Gerhard Hafström, De svenska rättskällornas historia, Lund 1972; Goran Inger, Svensk rättshistoria, Lund 1980; KG Westman, Häradsnämnd och häradsrätt under 1600-talet och början av 1700-talet, Uppsala 1927.
- 4 See for instance Keith Wrightson's article in **Brewer and Styles (ed), An Ungovernable People**, London 1980 and James A. Sharpe, **Crime in Early Modern England 1550-1750**, Longman 1984.
- 5 This part about the Church is mainly based on Jan Sundin, 1981.
- 6 Among the literature about the influence of the Church and Mosaic law upon the civil law during the seventeenth century see for instance: J.E. Almquist, Karl IX och den mosaiska rätten, Lychnos 1943; Ruben Josefsson, Guds och Sveriges lag. Studier i den lutherska socialetikens historia, 1950; Sven Kjöllnerström, Guds och Sveriges lag under reformationen, Lund 1957; Henrik Munktel, Mose lag och svensk rättsutveckling, Lychnos 1936.
On the priests' opposition to Gustavus III's reforms see Erik Anners, Humanitet och rationalism. Institutet för rättshistorisk forskning 1:10, Stockholm 1965.
- 7 James Sharpe, **quoted above.**
- 8 Keith Wrightson and James Sharpe quoted above.

- 9 Jan Sundin, Bandits and guerilla soldiers. Armed bands and violence on the border between Sweden and Denmark in early modern times. Report under publication from the conference on "Violence in the Atlantic and Mediterranean World since the Later Middle Ages", Maastricht 1984.
- 10 Jan Sundin, 1981.
- 11 See for instance Keith Wrightson's article quoted above.
- 12 Jan Sundin, 1984.
- 13 Jan Sundin, Theft and Penury in Sweden 1830-1920. A comparative study at the county level. Scandinavian Journal of History 1976:1. Birgit Petersson, "Den farliga underklassen", Studier i fattigdom och brottslighet i 1800-talets Sverige. With an English summary. Umea 1983.
- 14 James A. Sharpe quoted above.
- 15 Jan Sundin, 1976.